Wood, Edmund Burke (1820-1882)

MR. WOOD'S ARGUMENT

BEFORE THE

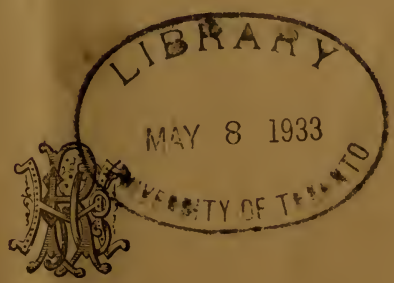
PROVINCIAL ARBITRATORS

ON THE MODES PROPOSED FOR THE

APPORTIONMENT OF THE EXCESS OF DEBT AND DIVISION OF ASSETS

BETWEEN

ONTARIO AND QUEBEC.



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MR. WOOD'S ARGUMENT

Before the Provincial Arbitrators on the modes proposed for the apportionment of the excess of Debt, and division of Assets between Ontario and Quebec.

Ontario has suggested three modes, upon one of which or upon parts of the three combined, the excess of debt and the assets should be divided between Ontario and Quebec :—

1. Origin of Local Debt.
2. Population.
3. Value of Capitalized Assets.

1. *Origin of Local Debt.*

In treating of the propositions for the division of the excess of debt and the assets, I shall assume certain amounts, for the purpose of presenting more clearly what I have to offer, and which, though not strictly correct, can in no way affect the principle of the mode of division. It is known that the total debt of the late Province will be at least $79,500,000, without the deductions provided for by The British North America Act, and after such deductions, to $73,000,000. That will make the excess of debt over $62,500,000, at least $10,500,000. Now, on examination of the items which compose the total debt, it will be found that that portion of it created for Local purposes in Upper Canada and Lower Canada, amounts in round numbers to $17,000,000, of which, $10,000,000 was for Upper Canada purposes and $7,000,000 for Lower Canada purposes. The total debt is reduced from $79,500,000 to $73,000,000 as I have just said by deductions ; and therefore, the excess of debt to be divided, is only $10,500,000, instead of $17,-000,000, the amount of the debt created for Local purposes. If the total debt were not reduced, there would have been $17,000,000 instead of $10,500,000 excess of debt to be divided between Upper Canada and Lower Canada. In the latter case, it is manifest that the correct principle would have been to apportion to Lower Canada the debt created for her Local purposes, namely, $7,000,000, and to Upper Canada that created for her Local purposes, namely, $10,000,000. Can the soundness, justice and fairness of this principle be assailed ? If it can, it certainly has not been so far attempted. I cannot conceive how any one can offer any rational objection to the principle of the division embraced in this pro-

position. If this be granted, the real excess of debt, be it $10,500,000 or any greater or less sum, must be divided rateably as follows :—

17,000,000 : 10,500,000 : : 10,000,000 : Ontario debt.
17,000,000 : 10,500,000 : : 7,000,000 : Quebec debt.

Of the debt created for local purposes, ($17,000,000), in round numbers $6,000,000 resulting from the Seigniorial legislation, left no asset behind it. If the whole $17,000,000 had left behind it $17,000,000 of assets, then Lower Canada would just simply take its assets, situate within its own Province, namely, $7,000,000, and Upper Canada would take its assets, situate within its own Province, namely, $10,000,000. But as I have said before, $6,000,000 of the $17,000,000 left no asset behind it—that is, the assets to be divided amount to only $11,000,000. It follows logically that the assets should be awarded on the same principle as the excess of debt ; or to speak more accurately, it necessarily follows that the same principle actually divides the assets, giving to Lower Canada the assets left behind its local expenditure of $7,000,000, less its Seigniorial Legislation expenditure ; and to Upper Canada the assets left behind its local expenditure of $10,000,000, less its compensation flowing from the Seigniorial Legislation. In other words, of the assets to be divided by the arbitrators, it gives to Lower Canada its local assets, and to Upper Canada its local assets. It is worthy of observation that so unassailable is this principle, that the principle of proportion applied to the division of the debt, is equally applicable to the division of the assets, and produces the same results. Of all the modes suggested, this is least open to objection. It is founded on truth and justice. It is not even open to criticism. It is able to be understood by the commonest intellect. It cannot be attacked by the partizans of either Province, and must recommend itself to the common sense of the whole country. The same cannot be said of any other mode which has been suggested or which I have been able to suggest to myself.

2. *Population.*

In dealing with large sums to be distributed among or to be borne by the people of one country who are homogeneous, of the same origin, and of the same general habits and characteristics, the principle of population has been uniformly adopted. For in such a country it is reasonable to suppose that members of one community in one portion of the country taken as a whole, contribute as much to the general expense of the whole as the members of any other portion of the commonwealth, and are therefore entitled to participate equally in any distribution made to the whole country, and should, for the same reason, be equally liable to bear any impositions imposed on the whole country. On this principle the Zollverein or Customs Union of the Germanic States was formed, and forty years experience has demonstrated the correctness of this principle. Under this Customs Union now, over 23,000,000 thalers are

annually collected in one common Treasury, and distributed among fifteen independent States, whose population in the aggregate amounts to nearly forty millions, pro rata of their population. But we have a notable example where this principle was recognized and acted upon nearer home. According to the Quebec Resolutions, as sanctioned by the Legislatures of the several Provinces, the debts which each Province might bring into the Union, which were to be the debt of the Dominion, and to form a charge on the joint revenues of all, were based on the population of each Province. The subsidy which each Province was to draw from the Common Exchequer for the support of its local government, was according to and based upon its population. An additional subsidy for a limited period of time was given to New Brunswick. But this was not a departure from the principle, but a most emphatic recognition of it, as will be seen by reference to the sixty-fifth of the Quebec Resolutions. True it is, additional subsidies were given in the way of special payments by the delegates in England, and which are now embraced in the British North America Act, which are not based strictly, though approximatively, on population. But these were never authorized or sanctioned by either the Legislatures of the Provinces or the people. They were declared by the whole country to be wrong, while the adjustment of the debts, and the subsidies on the principle of population, met with the universal approbation of the whole country ; and one does not see how it could be otherwise, for its justness and fairness as a rule, applicable to a homogeneous people, cannot be denied. The principle of division, according to population, has the more force in the case under consideration, from the fact that this division of the excess of the debt of the late Province at the Union, and this division of the assets handed over to Upper Canada and Lower Canada, spring directly out of and are cognate to the Confederation of the British North American Colonies, the financial arrangement of the Union of which, was based expressly on population. It may perhaps be as well in order to silence for ever any argument as to the principle upon which " the adjustment of the debts, credits and liabilities " of the several Provinces was based in the great scheme of Confederation, to make a few quotations from the Quebec Resolutions, and from the Speeches of the Minister of Finance (Hon. Sir A. T. Galt), and the President of the Council (Hon. George Brown), in the Parliament of the late Province, while the Quebec Resolutions were under consideration.

Quebec Resolutions.

" 64. In consideration of the transfer to the General Parliament of the powers of Taxation, " an annual grant in aid of each Province shall be made, equal to eighty cents per head " of the population, as established by census of 1861, the population of Newfoundland " being estimated at 130,000. Such aid shall be in full settlement of all future " demands upon the General Government for local purposes, and shall be paid half- " yearly in advance to each Province:

"65. The position of New Brunswick being such as to entail large immediate charges upon "her local revenues, it is agreed that for the period of ten years, from the time when "the Union takes effect, an additional allowance of $63,000 per annum shall be made "to that Province. But that so long as the liability of that Province remains under "$7,000,000, a deduction equal to the interest on such deficiency shall be made from "the $63,000."

Hon. A. T. Galt's Speech, Con. Debates, page 66.

"It must be evident that entering such a partnership as is proposed, some "common basis must be arrived at on which each Province must enter into the "Confederation. Taking all the engagements, present and future, of Nova "Scotia and New Brunswick, it was found that *relatively to their populations* they "amounted to about $25 per head, and this amount so applied to Canada would "entitle us to enter the Union with a debt of $62,500,000."

Hon. George Brown's Speech, Con. Debates, page 93.

"But as any grant given from the common chest for local purposes to one Pro- "vince must be extended to all on the basis of population, it follows that for every "$1,000 given, for example, to New Brunswick, we must give over $1,300 to "Nova Scotia, $4,000 to Lower Canada, and $6,000 to Upper Canada * * *

Grant to Upper and Lower Canada. That was always based on population according to the last census.

It is, therefore, difficult to conceive what reason or argument can be urged against adopting the principle of population, according to the census of 1861, in the apportionment of the excess of debt between Upper Canada and Lower Canada, and the division of the assets belonging to them under The British North America Act, conjointly—especially as it is so manifestly just in itself—has been so generally recognized under similar circumstances by other nations—and was expressly acted upon in forming the Union of the British North American Provinces—and is now in explicit terms embodied in the Constitutional Act.

If this principle be adopted, the apportionment of the debt and the division of the assets, become simple and easy, and free from all complications. It would stand thus: As the population of Upper and Lower Canada is to that of each Province, so is the excess of debt to that portion of it which each Province should bear. The proportions would be stated as follows:—

	Pop. of U. C. and L. C.	Pop. of U. C.	Assumed excess of debt.
Ontario,	2,507,657 :	1,396,091 : :	$10,500,000 :
Quebec,	2,507,657 :	1,111,566 : :	$10,500,000 :

And on precisely the same principle and for the same reasons would the assets be divided. These assets for the sake of illustration are assumed at $11,000,000. That is about their nominal amount. It would, therefore, follow that as the population of Upper and Lower Canada is to the population of each Province, so is the total assets to that portion to which each is entitled. The results of which would be to leave each Province in possession of the assets located in each Province. In the application of this principle to the division of assets, the final results may, and no doubt should be modified in consideration of the peculiar circumstances under which some of the assets had their origin, and in the further consideration of their intrinsic value.

3. *Capitalization of Assets.*

At a meeting of the Arbitrators held on the 2nd day of September, 1869, Judge Day stated that it was desirable that a valuation of the assets to be divided should take place, with a view, as it may reasonably be supposed, to their division according to value; and he proposed that the Treasurers of the respective Provinces should be the valuators. Mr. Wood objected to this, on the ground that the Treasurers would be most unlikely to agree on such valuation, and suggested that as the annual income was the best criterion by which to judge the value of any property, the Auditor should be ordered to make up, for the use of the Arbitrators, a statement shewing the annual revenue or proceeds derived from the assets for four and a-half years prior to Confederation, and the average annual per centage of the proceeds of each asset for that period. To this proposition the

Treasurers of both Provinces assented. The arbitrators, thereupon, ordered the statement to be made up by the Auditor, and it was accordingly done, and laid before the Arbitrators. It is submitted that the value of the assets thus ascertained, is the best that can be obtained, and shows correctly the value of the assets in the hands of the respective Provinces. It may be urged in respect of some of the assets, as for example, the Municipal Loan Fund U. C. and L. C., the Quebec Fire Loan and some other assets, a greater annual sum might be derived from them by using coercive measures, than was derived for the four and a half years next preceding Confederation, or than was annually derived from them from the origin of the assets down to Confederation—the average for the entire latter period being about the same as the average for the former period of four and one half years. But I think it fair to assume that the same causes, be they local, political or otherwise, which prevented a larger annual income to be derived from these assets than that shown on the average of four and a half years prior to Confederation, and which since Confederation have rather diminished than increased this income, will continue to operate in snch a way as to preclude any well founded expectation that these assets under Provincial management will produce any greater annual income than has heretofore been derived from them. Be this as it may, this mode of valuation, taking the period of four and a half years, was deliberately assented to by the Treasurers of the respective Provinces, and as deliberately ordered by the Arbitrators; and, therefore, it is not competent, I think, now for either the Treasurers or the Arbitrators to question its correctness.

The following is the Statement of Assets of Ontario Capitalized at 6 per cent. on the average per centage of four and one half years next preceding Confederation :

ONTARIO.

ASSETS.	Amount.		Average rate per cent. for 4½ years.	Value capitalised at 6 per cent.	
U. C. Building Fund	$ 36,800	00	$ 0.06	$ 36,800	00
Law Society, U. C	156,015	61	7.14	156,015	61
Consolidated Municipal Loan Fund, U. C.—					
Principal $4,651,895 98					
Interest 2,166,466 35					
	6,818,362	33	1.69	1,920,505	38
Agricultural Society, U. C. (This is put down as yielding nothing, yet it is a good asset for the amount, the Society being able to pay)	4,000	00		4,000	00
Revenue Inspectors, U. C	2,426	41			
	7,017,634	35	$	2,117,320	99

QUEBEC.

ASSETS.	Amount.		Average rate per cent. for 4½ years.	Value capitalised at 6 per cent.	
Aylmer Court House Debenture Account, 6 per cent.. ...	2,000	00			
Aylmer Court House, Account Current.....	1,239	70			
Montreal Court House—					
Debenture Account $95,600 00					
Account Current..... ... . 18,996 21					
	114,596	21	17,12	114,596	21
Kamouraska Court House Account Current, $201,91. There are $8,955, 8 per cent Debentures, forming a first charge on the income. Ten per cent. would pay the interest on the Debentures, and leave ample to wipe out the Account Current, $202 91.....	201	91		201	91
Consolidated Municipal Loan Fund, L. C.—					
Principal.....$2,156,687 14					
Interest 787,742 83					
	2,939,429	97	2,88	1,410,926	38
Superior Education, L. C.—					
Legislative Grant.....$ 28,494 73					
Balance of deficit in Education Office.. 290 10					
Income Fund..... ..... 234,281 46					
	263,066	29	14,30	263,066	29
Quebec Fire Loan.....	261,254	65	1,98	87,204	03
Building and Jury Fund, L. C.....	116,475	51	11,58	116,475	51
Municipal Loan Fund, L. C.....	484,244	33	1,14	92,006	42
Registration Services, L. C.....	2,524	38	3,910,60	2,524	38
Temiscouata Advance Account	3,000	00			
$	4,191,032	95	$	2,087,001	13

Upper Canada Assets	$7,017,604 35	valued at	$2,117,320 99
Lower Canada Assets	4,191,032 95	valued at	2,087,001 13
Total assets U. C. and L. C.,	$11,208,637 30	Total value	$4,204.322 12

Now it is quite clear that if the debt is to be divided according to the value of the assets which are in each Province, it will be stated thus: As the total value of assets ($4,204,332 12) is to the value of the assets in each Province (Ontario $2,117,320 99 and Quebec $2,087,322 12) so is the excess of debt ($10,500,000) to that portion of it which each Province should bear; and it is equally clear on the same principle that the assets which should be given to each Province would be—as the total excess of debt is to that portion of it which would by the foregoing proportion fall on each Province, so is the total assets to that portion of them which would belong to each Province. In short, the first proportion gives the debt to be borne by each Province, and the second proportion, the converse of the first, gives the assets which should belong to each Province. The two proportions may be stated as follows:

4,204,332 12 : 2,117,320 99 : : 10,500,000 : Ontario debt.
4,204,332 12 : 2,087,001 13 : : 10,500,000 : Quebec debt.
10,500,000 : Ontario debt : : 4,204,332 12 : Ontario assets.
10,500,000 : Quebec debt : : 4,204,332 12 : Quebec assets.

By this mode of dividing the excess of debt and the assets, predicated as it is on the real value of the assets as fixed by the average annual per centage for four years and a half years prior to Confederation, or for any longer period prior thereto —(for as has been observed if the annual average per centage for the whole of the existence of each asset be taken, instead of four and a half years, the result will be substantially the same)—all questions and disputes as to whether one asset is good or bad, or worth more or less than another, are avoided. One Province might say, "true we did expend so much on local objects in our Province but "the investment has proved unremunerative, and the asset is unproductive, and, "however valuable it may be as a public work to the whole Province, as a source "of revenue it is worth nothing, and it should in the division of the excess of debt "and the assets be put down at less than its nominal value or at nil." The principle of capitalizing the assets, that is, arriving at their real value in the way agreed upon by the Treasurers, and then capitalizing the average annual per centage, entirely removes all such objections: and as it substantially agrees with the other two modes of division, namely, "Origin of local debt," and "Population," it is equally fortified by every argument and consideration which has been adduced in support of a division on the principle of the "Origin of local debt," and the principle of "Population."

The consideration of the three modes suggested, substantially lead to the same conclusions. Neither is hostile to or opposed to the other. Each starting from independent first principles, produces substantially the same results as the other. The basis upon which each is predicated, cannot be shaken; for it is founded on truth and justice; and the arguments and reasons which may be adduced in support of each, are equally applicable to all, and are unanswerable and conclusive.

Quebec objects to any and all of the three modes suggested, but has really offered no argument against any of them unless an argument can be gleaned from the following quotation from the

"Memorandum submitted on behalf of the Province of Quebec," by its Council, Messrs. Casault and Ritchie.

"*II Division of the Surplus Debt.*

"One of the most important tasks which the Arbitrators will have to perform "is to divide the surplus debt of the late Province of Canada between Ontario and "Quebec. The 112th section of the Confederation Act makes Ontario and "Quebec conjointly liable to Canada for the amount by which the debt of the "Province of Canada exceeds at the Union $62,500,000; these Provinces being "chargeable with interest at 5 per cent per annum upon such surplus debt.

" This debt is to be apportioned by the Arbitrators between Ontario and " Quebec.

" It has been suggested, that this division should be according to the popula- " tion of each, as it stood either when the Confederation took place, or at the last " census in 1861, or according to the origin of the debt.

" 1. To take the population whether that of 1861 or that of 1867, as a guide, " without taking into account the respective financial positions of the parties " when first united in 1841, or enquiring in whose interest and in what propor- " tion for each the subsequent indebtedness was incurred, would be most unjust. " It might free from its just proportion of the debt the party which had profited " the most by it, and charge it to the one which had the least interest in its being " incurred, or which derived from it the smallest benefit. The injustice of this " method will be made apparent by reference to a few facts and figures taken " from the public returns.

" *The debt of Upper Canada on the* 10*th February*, 1841, *was*—

" 1. Debentures (as per Appendix No. 3, Vol. 6, 1847, K. K. K.,) cy.,	£1,398,855 9s. 10d	
" Equivalent to		$5,595,421 97
" 2. Floating debt, being balance of expenditure over receipts, from 1821 " to 1841, (same Appendix)		330,357 57
" Making together.		$5,925,779 54

" *Debt of Lower Canada*, 10*th February*, 1841—

" 1. Debentures, (same Appendix)	£96,748 4s. 7d.	
" Less Montreal Harbour (the debt due by the same " not being charged against Ontario and Quebec in " the statement of affairs, on the ground that it is " only a contingent liability, and that the fund always " paid its interest)	£81,499 4s. 7d.	
	£15,249 0s. 0d.	
" Equal to	$ 60,996 00	
" But Lower Canada had at its credit, (being excess " of receipts over expenditures, from 1791 to 1841) " appendix K. K. K., of 1847	$ 250,302 41	
" From which deducting above debt	60,996 00	
" It is found that instead of having any debt, it had " then at its command	$ 189,306 41	
" Striking out this amount is equivalent to its addition to the debt of " Upper Canada		$ 189,306 41
" Which would then stand at		$6,115,085 95

" Taking the population of each at that date, Upper Canada, (see
" Census 1851, vol. 1, p. xvii,) was 465,377, and Lower Canada,
" making it as near as anterior and subsequent census permit, to wit:
" census of 1831 and 1844, there being none for that Province in 1841,)
" was 663,258,—it establishes that, to be on an equal footing according
" to population, Lower Canada should have entered the Union with a
" debt of..... $8,715,630 60

" Must not such disproportion be taken into account in the division of the " debts, credits, properties and assets; and the more since it existed at a time, " when improvements of all kinds were so much needed, and money expended in " roads and other public works, would, no doubt, have given to Lower as it did to " Upper Canada, an impetus which would have given an immense augmentation " of population, resources and wealth ?

" 2. The other mode suggested, if its adoption was possible, would be more " consonant with the requirements of justice. But to be so, recourse must be " had to the true and real origin of the debt, not to that which is the work of " mere fancy. It would require to go back to the Union of the two Canadas, " take their respective debts and credits at that time, examine in detail all the " expenses incurred since, note specially the Province for which or in whose " interest it was incurred, and determine thereby the share of each. Such a work " would not only entail an amount of labour, and a consideration of circumstances " which the arbitrators are not expected to undertake, but would also require a " minute examination of all the administrative acts of the different governments " since 1841, and an accurate appreciation of the same. In fact the adoption of " this mode is impracticable.

" To take the assets as a guide would be most fallacious, and the more so if " only a part of them were taken into consideration. It has often occurred that " very important and advantageous outlay for the part of the Province in which it " was made, was the most unproductive to the treasury. For instance, the roads " in Upper Canada, on which very large sums of money were expended, which " tended as much if not more than any other expenditure to open up and colonise " Ontario and thereby create its wealth; government nevertheless felt it its " interest to surrender for a nominal consideration to private companies or to the " several municipalities within which they lie. The assets are silent on that head. " Again the amount set down as the value of public works retained by the Domi- " nion may be fairly contested as between Ontario and Quebec. To the Dominion " they are worth their present value ; but in determining the origin of the debt, it " is not their present value but their original cost which should be considered.

" 3. The plainest, easiest, and it may be said the only just and practicable " way of settling the question, is to treat the case as one of ordinary partnership, " and apply the rules which govern the partition of partnership estates, rules

" which are the same in the old Roman, and in the modern English and French " law.

" Adopting this principle, the arbitrators would treat the Union of the two " Canadas, from 1841 to 1867, as having been equally advantageous to both, or, " in other words, as if each had derived the same benefit from it. Considering " that Lower Canada, which came into the Union in 1841 with a large sum at its " credit, and a population about one half larger than that of Upper Canada, left " in 1867 with comparatively limited resources, and that although Upper Canada " entered it with an exhausted treasury and a small population, it left with a much " larger number of inhabitants, an annual subsidy which exceeds by $237,620, " representing a capital of $3,960,333.34, that of its sister Province, and great " wealth, it will be admitted that this hypothesis is not partial to Quebec. It will " however do away with what has been shown above to be impracticable the minute " inspection and appreciation of all the accounts of the Province of Canada during " the twenty-six years of its existence, and will leave only the consideration of the " financial position of Upper and Lower Canada, when they became united, and " the debts, credits, properties or assets, the partition of which is rendered neces- " sary by the dissolution of their partnership.

" According to this method of division, each Province ought first to assume " the excess of debt, a sum equal to its own debt, when it entered the Union in " 1841, and the balance ought to be equally divided.

" Whatever may be urged against this mode, it is nevertheless the only just " and reliable one. It has this advantage over all other modes, that being the " rule which governs the relations of man with man in similar positions, it cannot " give rise to grounds of complaint nor to suspicions of favor, unfairness or in- " justice.

" Assuming it to be impossible, as above demonstrated, to ignore the relative " financial positions of the two Provinces in 1841, even if population were taken " as a basis for the division of the surplus debt, the following concise statements " will prove that the adoption of this arbitrary rule, namely, population, would " free Quebec from a larger amount of the debt.

" *Debt of Upper Canada in* 1841, (*as above stated*)—

" 1. Debentures		$5,595,421 97
" 2. Floating Debt		330,357 57
		$5,925,779 54

" *Debt of Lower Canada in* 1841—

" 1. Credit	$250,302 41	
" Less Debentures	60,996 00	
	$189,306 41	189,306 41
" Striking it off, makes as already stated, debt of Upper Canada,		
" equivalent to		$6,115,085 95

" Surplus debt payable by Ontario and Quebec, on terms agreed upon		
" at the Montreal Conference		$10,424,853 87
" Deduct for Upper Canada its debt in 1841		6,115,085 95
Balance		$4,309,767 92
" Divided equally, it gives each Province		$2,154,883 96
" According to population in	1861.	1867.
" It gives Ontario	$2,399,382 48	$2,512,650 89
" Quebec	1,910,385 44	1,797,117 03
	$4,309,767 92	$4,309,767 92

" So that by the mode suggested, Ontario would, on the surplus of debt, be " charged with $244,498 52, less than according to its population in 1861, and " with $357,766 93 less than its share by its population in 1867."

It is not proper to be discourteous in dealing with so grave a question as that under consideration, and yet I can scarcely forbear remarking that it is difficult to conceive how any sane man could seriously propose so absurd a proposition as is contained in the foregoing extract. Aside from the inaccuracy of the figures, it proposes to take the debts of Upper Canada and Lower Canada at the Union on the 10th Feby., 1841, or rather the debt of Upper Canada, and an alleged balance in the Exchequer of Lower Canada, added to the alleged debt of Upper Canada, and, while ignoring the principle of population, increasing it in the ratio by which the population in Lower Canada at that time exceeded the population in Upper Canada, and then, leaping over a period of twenty-six years, (from 10th Feby., 1841, to 1st July, 1867), to charge directly this alleged amount of debt ($8,715,630 60) to Upper Canada in the apportionment of the excess of debt over $62,500,000, and then, while all the time ignoring the principle of population, actually proposing to divide the balance of the excess of debt, after deducting the alleged debt of Upper Canada according to population; even suggesting that the population should not be taken according to the census of 1861, on which Confederation was based, but the supposed population of 1867! and this is said to be based on the principle of a general partnership, as defined by the Roman Law and the Common Law of England! If it were not urged with an apparent seriousness, and if the interests involved were not so momentous, I would content myself with simply stating this most extraordinary proposition without saying one word in reply to it. Can it be possible that any one can seriously argue that the arbitrators are to simply take into consideration the debt of Upper Canada at the Union as proposed, without any reference to the assets of the two Provinces, and then pass over the intervening period of the Union, continue this debt for all that time, and at the separation of the Provinces by Confederation in 1867, revive this debt as against Upper Canada, although all or nearly all of it was long prior to Confederation, paid and discharged, and charge it to Ontario in the division of the excess of debt of the late Province of Canada over $62,500,000! and this is

attempted to be justified on the principle of a general partnership! This would be, I must confess a most extraordinary partnership,—a partnership at the beginning and at the end, *but not during the existence of the partnership.* Why did not the Counsel propose to charge interest on the debt of Upper Canada with annual rests for twenty-six years? If it is proper to charge the principal it is equally proper to charge the interest. In this way instead of making it $6,000,000, they would make it $20,000,000! They have just as much right to make it the latter sum as the former. If any thing were needed to show the utter absurdity of the proposition it is this following out the proposition to its logical sequence. The figures in the foregoing quotation are entirely wrong. The source from which they profess to be derived, has the sanction of no authority, and is not only unreliable but positively erroneous. The only reliable source whence any figures relating to the debts and assets of Upper Canada and Lower Canada can be derived is the Public Accounts, as they appear in the annual printed reports of the Minister of Finance, and as they stand in the Provincial books in the Finance Department. No compilation of Committees can supercede these. Taking the Public Accounts then for a guide, the debt of Upper Canada in 1841 was not $5,925,779 54, but it was only $5,416,855 70. Instead of Lower Canada, after deducting its debt having at its credit $189,306 41, it had a debt of $488,369 83 over all credits; and if from this is deducted the Montreal Harbour Debentures of £81,409 : 4 : 7, it would still stand at $162,372 92. In short, there is scarcely a correct figure in the whole statement. To show what was the actual state of the debt of each Province and the assets, provincial in their character, brought into the Union on the 10th February, 1841, I subjoin the following statement from the Public Accounts, verified by the Provincial books in the Finance Department:

DEBT OF THE PROVINCES at the Union, February 10th, 1841.

——	Upper Canada.			Lower Canada.		
	£	s.	d.	£	s.	d.
As per Tables in Public Accounts	1,346,633	5	5	123,675	0	0
LESS—To credit, as per Consolidated Fund Statement, 1841	19,089	5	7½	36,530	14	5
	1,345,543	19	9½	87,144	5	7
Add to Debt, as per do do	8,669	18	8½	30,857	18	1
	1,354,213	18	5½	118,002	3	8
Add also for sums credited above which could not be collected				4,090	5	6
£	1,354,213	18	5½	122,092	9	2
$	5,416,855	70		488,369	83	
LESS—Montreal Harbour Debentures				325,996	91	
$	5,416,855	70		162,372	92	

SCHEDULE OF ASSETS which at the Union became "Provincial."

—	Paid by Upper Canada.		Paid by Lower Canada.	
	$	cts.	$	cts.
Welland Canal	1,411,427	77	100,000	00
Burlington Bay Canal	124,356	08		
St. Lawrence do	1,407,444	43		
Rideau do	5,630	35		
Lachine do			398,404	15
St. Ann's Locks			19,860	02
Richelieu and Lake Champlain Navigation			322,441	58
Lachine, Coteau and Cedar Rapids			48,405	83
Light Houses, Beacons and Buoys	98,550	51	472,024	74
Slides and Booms on the Trent	41,822	67		
Do Newcastle District	43,320	00		
Kingston Penitentiary	176,795	01		
	3,309,346	82	1,361,136	32
OFF—Lower Canada Assets	1,361,136	32		
$	1,948,210	50		
Debt of Upper Canada at the Union	5,416,855	70		
LESS—Excess of Assets	1,948,210	50		
	3,468,645	20		
Deduct Debt of Lower Canada at the Union	162,372	92		
Leaving Debt of Upper Canada at $	3,306,272	28		
And Lower Canada nil.				
LESS—Insurrection losses included in the Debt of U. C., as stated above, debentures for which were issued under 8 Vic., cap. 72, and were paid out of Upper Canada Tavern Licences, £40,000.	160,000	00		
	3,146,272	28		
Deduct—Not having been incurred £117,800 cy., Welland Canal	471,200	00		
Leaving total Debt of Upper Canada	2,675,072	28		
And that of Lower Canada nil				

By the above statement it appears that the $5,925,779.54 debt of Upper Canada dwindles down to $2,675,072.28, and the boasted surplus of Lower Canada of $189,306.41 disappears altogether. But I contend it is useless to discuss so absurd a proposition as to treat the matters under consideration in the manner proposed, on the specious pretence that to do so would be in accordance with the principles of a general partnership; but if it is to be done, the principle must run through the whole course of receipts and expenditures from the beginning of the union to the end of it; in which case we shall not proceed far in the investigation before the balance will not only not be against Ontario, but largely, very largely, against Quebec. The question then may be asked, why object to the proposed method of dealing with the excess of debt and the assets to be divided in the British North America Act? I answer because it will be the occasion of the development of a state of things which would prove anything but satisfactory to the Province of Quebec, and might give rise to discontent at the present state of things in the most important portion of the Dominion, and might produce results which

Quebec might find itself unable to accede to. My object is to arrive at some method which will be practicable, and at the same time founded on sound principles which will recommend themselves to the judgment of the people in both Provinces. If the principle of a general partnership is to be adopted, it must be taken at its full measure and in its full legal and proper length and breadth; not at the beginning and end of the partnership concern, with a discrimination as to the capital, as proposed by Quebec, but the Provinces must be considered as having started as equals in all respects at the beginning, and be treated as equals during its continuance, and at its end and in its winding up. It cannot be taken in any modified form. Even the Counsel for Quebec are obliged to admit that there is no warrant for the departure from the principles of a general partnership, which they propose by attempting to drag in the question, "who put in the greater or the "smaller capital, and whose assets or revenues were free from or had charges in "the shape of debts incumbering them at the beginning;" and then at the end or dissolution of the partnership, to attempt to charge the one party or the other with a greater or less portion than half the debts or to give to one party or the other more or less than half the assets—the principle being too well understood that in every partnership where the contrary is not expressly stipulated, each partner must be presumed to have brought in equal capital, and at the end of the partnership must share equally in the profits and losses, and in all the partnership property and assets. The only reason given for the course proposed is that it is inconvenient to do otherwise. But the question arises, on what authority can the principle of a general partnership be adopted and acted upon, and yet go into any and least of all a partial consideration of what each partner brought into the common concern, in the apportionment of profits and losses—that is—assets and excess of debt at the dissolution? Such a mode of dealing with the assets and liabilities of a general partnership is without any authority whatever. It has not one single characteristic of a general partnership. The name of partnership is used by the Counsel, but that is all. In the case of the Provinces, if it had been specially agreed that the Provinces should be united—that the revenues of each should be merged—and that at the dissolution each should be charged or credited with the debt each owed, or credited with the money each had at the union, and that all revenue and expenditure during the union should be considered equally advantageous to both,—(the very contrary of all which is expressly or impliedly declared in the Union Act of 1840), one could understand the proposition of the Counsel for Quebec. This, if in the nature of a partnership at all, would be one founded on a contract containing the most specific terms. But no such contract is pretended. The entire proposal is wholly arbitrary. It has not one solitary feature of any partnership whatever to sustain it; and yet it is put forth under the specious pretence and delusive guise that it is founded on the principles of a partnership entered into by two parties without any stipulation as to capital, profits or losses—which is called by the Counsel a general partnership, having neither the sanction nor the authority

of the Roman, French or English law. It may be as well to understand what is the proper meaning of a general partnership:

> "General partnerships are properly such when the parties carrying on all "their trade and business, whatever it may be, for the joint benefit and profit "of all the parties concerned, whether the capital stock be limited or not, or "the contributions thereto be equal or unequal."—*Story on Partnership, sec.* 74.

Such a partnership without an express contract to the contrary would entitle each partner to share equally in the profits, and subject him to bear equally the losses. Now as I have already said, it is not pretended in the case of the Provinces there was any stipulations as to the *terms and conditions* of partnership contended for. What then if a general partnership be conceded, would on authority be its necessary incidents? Story in his work on Partnership, Secs. 24 & 25, says:—

"In the absence however of all precise stipulations between the partners as "to their respective shares in the profits and losses, and in the absence of all other "controlling evidence and circumstances, the rule of the common law is, that they "are to share equally of both; for in such a case equality would seem to be equity. "And the circumstance that each partner has brought an unequal amount of capi- "tal into the Common Stock, or that one or more has brought in the whole capital, "and the other have only brought in industry, skill and experience would not "seem to furnish any substantial or decisive ground of difference as to the distri- "bution; on the contrary the very silence of the partners as to any particular "stipulation, might seem fairly to import, either that there was not, all things "considered, any real inequality in the benefits to the partnership in the case, or "that the matter was waived on the grounds of good will, or affection, or liberality, "or expediency. * * * * * * * * * * * *

"The Roman Law promulgates the like doctrine. If no express agreement were "made by the partners concerning their shares of the profit and loss, the profit "and loss were shared equally between them. If there was any such agreement, "that was to be faithfully observed. *Et quidem* (says Institutes), *si nihil de "partibus lucri et damni nomination convenerit, æquales scilicet partes et in lucro "et in damno spectantur. Quod si expressæ fuerunt partes, hæc servari debent.* "So the Digest. *Si non fuerint partes societati adjectæ æquas eas esse constat.* * * * * * * * * * * *

"This also seems to be the rule adopted into the modern commercial law."

It may be objected that while in a general partnership, in the absence of any express stipulation to the contrary, it is admitted that each partner will be considered as being equally entitled to an equal share of the partnership property and of all profits, and equally liable *inter se* for an equal share of all losses, and for deficiencies of the partnership assets to meet the partnership liabilities, still if the private debt of any partner is paid out of the common fund, that debt at the dissolution should be charged against that partner; and that in the case under con-

sideration, it is only contended that the same rule should apply to the alleged debt of Upper Canada at the Union in 1841. But this mode of reasoning is fallacious, as a moment's reflection will demonstrate. Partnership or co-partnership has been defined by text writers on the law of partnership, to be "a combination "of two or more persons of capital, of labor or skill for the purpose of business "for their common benefit."—(*Parsons on Partnership.*) "It is a voluntary "contract between two or more competent persons, to place their money, effects, "labor, and skill, *or some, or all of them*, in lawful commerce or business with "the understanding that there shall be a communion of profits and of losses "between them."—(*Story on Partnership.*) This same author further states that partners may not contribute equally, and that some of them may contribute neither money nor effects, nor labor nor skill, but all these may be "*waived upon the* "*grounds of good will, or affection, or liberality, or expediency,*" and will be considered in law to have been waived, and that each partnership was put on an equality as to community of the partnership property and liabilities with all the other partners, although he may have brought into the partnership much less than some one or more of the partners, or indeed nothing at all, unless the contrary shall appear by express stipulation or by evidence fairly deducible from surrounding circumstances, and the course of dealing of the partners *inter se.*

Now, let us clearly understand what the Counsel for Quebec mean. They say: "Let this division of the excess of debt and this division of assets proceed on "partnership principles." To do this, you must consider the debt of Upper Canada at the Union in 1841 to be its *private debt;* and the alleged cash in hand of Lower Canada, to be its *private cash;* and taking away this debt and this cash, that the Provinces entered into partnership, making all else in both Provinces common. That the joint concern, having paid or assumed and become responsible for the debt of Upper Canada, Upper Canada is chargeable with it, and bound to pay it back; and that the united concern having had, and used the *private cash* of Lower Canada is bound to pay back to Lower Canada that cash. They say that it is to be assumed that every thing during the partnership was equal and fair to both Provinces, and that an equal division of the excess of debt (the liabilities or losses of the partnership concern), and an equal division of the assets (the profits or debts due the partnership concern) should at the end or dissolution of partnership (the Confederation of the Provinces) take place. Now, as I have before said, does not any one see if this were correct, Upper Canada should be charged interest with annual rests on its debt for twenty-six years, and Lower Canada should be credited with interest with annual rests on its cash for the same period. The mere statement of this fact shows the nonsense of the whole thing. But we are not left to the *reductio ad absurdum.* This debt of Upper Canada, as I have already shown, was chiefly contracted for public works which passed over as the common property of both Provinces at the Union, and are now, by the British North America Act, made the common property of the Dominion. The supposed cash in

hand of Lower Canada had no existence except in the imagination of the Counsel for Quebec. Instead of cash in hand, it was in debt, as I have also already shown. *Now, neither the debt of Upper Canada, nor that of Lower Canada, was in any sense whatever the private debt of either Province as disconnected from its revenue. In fact, the debt in each was simply a charge on its revenue made by various Acts of Parliament.*

It has no analogy whatever to the private debt of an individual entering into a partnership. It would more resemble a case of this kind. An individual might propose to another, that each should put his effects into a common partnership concern. The effects of each, or of one of them, being at the time incumbered, and known to be incumbered, to a certain extent. In such a case, in the absence of express provision to the contrary, the joint concern would be liable to discharge the incumbrances or incumbrance, and neither partner, *inter se*, would be liable therefor to the partnership concern, or to the other partner, but as between themselves each would be entitled to one-half of the profits and of the whole partnership effects, and be liable for one-half of the losses and of the whole liabilities. But unfortunately for the Counsel for Quebec this matter of the debt of Upper Canada and also the debt, or, if it pleases better, the cash in hand of Lower Canada, in the one case being a charge on Consolidated Revenue and in the other being cash to the credit of Consolidated Revenue—is left in no doubt. If it should appear that it was expressly declared in the articles of Partnership (the Union Act of 1840), that the debt of Upper Canada, and if any existed, of Lower Canada, should be paid out of the joint revenues of both Provinces, which by the Union Act were transferred to the (if you so please) partnership concern of Upper and Lower Canada, called "Canada," and no stipulation was made that either Province was to be charged with, held responsible for, or be called upon to repay the same, I think it must be conceded that an end is put to the controversy. Well, then, what say the articles of partnerships. The preamble to the Act of 1840, states, "Whereas it is necessary that provision be made "for the good Government of the Provinces of Upper and Lower Canada in such "manner as may secure the Rights and Liberties and promote the Interests of all "classes of Her Majesty's subjects within the same: And whereas to this end it "is expedient that the said Provinces be re-united and form one Province for the "purposes of Executive Government and Legislation, therefore," &c, &c.

Section 1 declares the partnership to be formed. It says:

"1. From &c., the said Provinces shall form and be one Province under the "name of the Province of Canada, and thenceforth the said Provinces shall cons-"titute and be one Province under the name aforesaid from and after the day so "appointed as aforesaid."

Section two removes all pre-existing ordinances inconsistent with the articles of partnership then made.

Sections from two to fifty prescribe the manner in which the Executive and

Legislative Government of the subject of partnership should be constituted, managed and carried on.

Section fifty provides that all the income, revenues and effects of both the partners should be the joint property of the partners, in which each partner should have an equal share without any regard to the amount or value of the revenues, income or effects which each contributed to the one common fund. It says :

" That upon the Union of the Provinces of Upper and Lower Canada all " duties and revenues over which the respective Legislatures of the said Provinces " before and at the time of the passing of this Act had and have power of appro- " priation shall form one consolidated fund to be appropriated for the Public " Service of the Province of Canada in the manner, and subject to the charges " hereinafter mentioned.

By section fifty-one, the Consolidated Revenue Fund of the Province of Canada is charged with the costs, charges and expenses of collecting the Fund.

By sections fifty-two, fifty-three and fifty-four, certain other charges are made on the Consolidated Revenue Fund, including the Civil List to Her Majesty.

Section fifty-five, is special ; and it would do no violence to its construction to say that it fully provides for any charges which the Legislature of the Province of Upper Canada or that of Lower Canada had previously made upon its Duties and Revenues, by the incurring of debts, which prior to the Union were made charges upon its Consolidated Revenue Fund. It is contended that this section is broad enough to cover, and does in fact in explicit terms cover, the reservation of Duties and Revenues sufficient to pay off all Upper Canada or Lower Canada debts contracted prior to the Union. It is as follows :

" LV. And be it enacted, that the Consolidation of the Duties and Revenues " of the said Province, shall not be taken to affect the payment out of the said " Consolidated Revenue Fund, of any sum or sums hereinbefore charged upon the " Rates and Duties already raised, levied and collected, or to be raised, levied or " collected, to and for the use of either of the said Provinces of Upper Canada or " Lower Canada, or of the Province of Canada, for such time as shall have been " appointed by the several Acts of the Legislature of the Province, by which such " charges were severally authorized."

All the debts of Upper Canada, as well as of Lower Canada, were by Legislative enactments made charges on the " *Rates* " and " *Duties* " of each Province respectively. Therefore it is submitted that this section alone provides amply for the payment out of reserved " *Rates* " and " *Duties* " of all pre-existing debts. But the question is not left here. Section fifty-six says :

" LVI. And be it enacted, that the expenses of the collection and manage- " ment and receipt of the said Consolidated Revenue Fund, shall form the first " charge thereon ; and that the *annual interest of the public debt of the Pro-* " *vinces of Upper and Lower Canada, or either of them, at the time of the* " *Re-union of the said Provinces*, shall form the second charge thereon ; and that

" the payments to be made to the Clergy of the United Church of England and " Ireland, and to Clergy of the Church of Scotland, and to Ministers of other " Christian denominations, pursuant to any law or usage whereby such payments, " before or at the time of passing this Act, were or are legally or usually paid " out of the public or Crown Revenue, of either of the Provinces of Upper and " Lower Canada, shall form the third charge upon the said Consolidated Revenue " Fund ; and that the said sum of forty-five thousand pounds shall form the " fourth charge thereon ; and that the said sum of thirty thousand pounds, so " long as the same shall continue to be payable, shall form the fifth charge " thereon ; *and that the other charges on the Rates and Duties levied* " *within the said Province of Canada, hereinbefore reserved, shall form the sixth* " *charge thereon, so long as such charges shall continue to be payable.*"

Particular attention is called to three points in sections fifty-five and fifty-six :

1. Section fifty-five expressly declares that any sum or sums of money theretofore charged upon the " *Rates* " and " *Duties* " of Upper or Lower Canada either already collected or thereafter to be collected should be paid out of the Consolidated Revenue Fund of Canada thereby formed of such " *Rates* " and " *Duties.*" *The debts of Upper Canada and Lower Canada were sums of money charged upon the said Rates and Duties by the several Acts of the respective Legislatures authorizing the creation of the several debts.*

2. By section fifty-six the interest on the public debt of the Provinces of Upper and Lower Canada or either of them at the time of the Union is made the second charge on the Consolidated Revenue Fund of Canada.

3. The other charges on the " *Rates* " and " *Duties* " levied within the Province of Canada thereinbefore reserved, that is, reserved in section fifty-five, is made the sixth charge on the Consolidated Revenue Fund so long as such charges shall exist ; that is, until from Consolidated Revenue Fund the principal of the debts of Upper Canada and Lower Canada, or either of them shall have been paid off—the interest of such debts having been declared to be the second charge on the Consolidated Revenue Fund. The fifty-fourth section reserves out of the " *Rates*" and " *Duties*" the charges made by the creation of the local debts of each Province. Section fifty-six makes the interest of such debts a second charge ; and " the other charges on the Rates and Duties " that is *the principal of the debts* the sixth charge on the Consolidated Revenue Fund.

The foregoing, then, are the express terms upon which the partnership was formed ; and it is worthy of remark that not the slightest trace of any intended inequality in respect of or on account of one or the other of the partners bringing into the partnership concern an unequal share or capital, that is, " *Rates* " and " *Duties,*" which in the one case might be more or less heavily charged than in the other, can be found. Therefore whether you view the partnership as without stipulations, and therefore a general partnership, to which the well known and admitted rules of law are applicable, or regard it in the light of the special and precise stipu-

lations upon which in fact it was formed, the conclusion is precisely the same. Both Provinces must be considered to have entered the Union on equal terms. The fact that the "*Rates*" and "*Duties*" of the one were more heavily charged than those of the other, or that the "*Rates*" and "*Duties*" of the one were charged with considerable sums, while those of the other were not charged at all, can make no difference either according to the law of Partnership or the express Agreements as found in the Union Act. And the truth is it should not, for while it may be admitted that the charges on the "*Rates*" and "*Duties*" of Upper Canada were greater than those of Lower Canada, it must also be admitted that the assets flowing from those greater charges in Upper Canada in the shape of Public Works, and which were made the joint property of both Provinces, were also greater. It would be, according to Partnership law, necessarily assumed that all advantages and disadvantages of the property and effects of each, charged or not charged, were well known and considered by the parties before forming the partnership, especially in the absence of all express declarations to the contrary on the subject. But when to this is added the express stipulations of the parties, unequivocally pronouncing *as doth the law, when stipulations are not found*, the same thing, argument becomes a waste of words. Further confirmation of this view, and which of itself as a matter of evidence ought to settle the whole controversy, is the fact that all the books of account, all the published public accounts of the late Province, all the legislation, running over a period of twenty-six years, prove the equality of the partners, and entirely remove any ground for setting up any claim as to inequality of capital at the beginning of the partnership, by maintaining throughout that period an unbroken silence, in so far as the legislation and the public accounts are concerned, on the subject. These are the only witnesses to which we can appeal or which we can summon, and they afford no evidence that any inequality existed in fact, or in the opinion of the partners in respect of the financial position in which each stood at the Union; on the contrary, these records construed according to the well-known principles of the law of evidence prove the very reverse of all this.

To keep up the partnership view of the case, this partnership was by the British North America Act, dissolved in 1867. It was a dissolution by the agreement of the partners; the partnership was formed by the agreement of the partners, at least it must be so considered, and it was without any doubt dissolved by the consent and agreement of the partners. In the instrument of dissolution, it is provided that the partners should form a new and more extended partnership with the Provinces of Nova Scotia and New Brunswick;—that certain large properties and effects, beside large rates and duties of the several Provinces should be surrendered to the joint concern;—that a certain amount of debt charged on the rates and duties of the several Provinces, should be cast upon the rates and duties surrendered to the joint concern, while a certain amount of debt should be borne *by* themselves, and certain assets should be reserved *to* themselves. But

the instrument of dissolution, while it defined and settled many things connected with the dissolution, did not state what portion of the debt which was to be borne by Upper Canada and Lower Canada, should be borne by each; nor what portion of the assets each should have; but it provided for the appointment of arbitrators to adjust and settle these points; just as under the winding-up Acts, an Official Manager is appointed, or as in the case of disagreement among partners in settling their partnership accounts, or apportioning or dividing their liabilities or assets, a Court of Chancery steps in and through the Master, winds up the concern. In the case before us, instead of the Official Manager or the Court of Chancery, we have a Court of Arbitrators who are bound to deal with the questions before them, if they are to be dealt with on the principles of partnership, in the same manner as would an Official Manager or the Court of Chancery. In the first place, they must determine the character of the partnership, whether it be general, universal or special. In the second place, whether it is founded on written or verbal contract or stipulations, or on the assent of the parties, not evidenced by special agreement, written or verbal. In the former case, the written or expressed stipulations alone must govern in every matter to which they apply. In the latter case, the law steps in and lays down the rules which must prevail.

In the present case the Arbitrators are asked to apply the principles which control general partnerships without any written or express stipulations. As the Law applicable to such a partnership lays down rules which are the same as those which are found written and expressed in the Union Act of 1840, it makes but little difference whether the partnership be regarded as one *with* or *without* special stipulations. In either case the course of procedure must be the same. Both parties must be considered as having entered the partnership with effects equal in value, notwithstanding any charges thereon; and each party must be assumed to have derived equal advantages from the partnership during its continuance, and in the arrangements made in the formation of the Dominion of Canada. Then it follows according to the rules of law applicable to such a partnership that the debt reserved to be borne by the Provinces conjointly by the British North America Act must be equally divided, one half to be borne by Ontario and one half by Quebec. The same rule must be applied to the Assets,—Ontario should be assigned one half and Quebec the other half. These Assets differ in value. Fortunately, however, a value has been placed on them at the instance and by the consent of both the Arbitrators, and the Treasurers of the two Provinces. And therefore it will not be difficult for the Arbitrators to divide them according to their value.

Although I do not think the division, on the principle of partnership, at all comparable to the other modes suggested; still, if the Arbitrators think differently, and after all that has been urged against it, adopt it, it must be on the distinct understanding that it must be taken in its entirety, and that the law of partnership in its full depth, length and breadth must be applied, and followed out to its logical consequences.

The results of the partnership principle would be as follows :—Assume the excess of debt as before at $10,500,000 to be equally divided,

Ontario's portion would be..... .....$5,250,000
Quebec's portion would be..... 5,250,000

Assume the Assets as valued at $4,204,322 12—

Ontario's share would be.....$2,102,161 06
Quebec's share would be..... 2,102,161 06

The principle of a general partnership, without stipulations or with stipulations, cannot be adopted and then worked out partly on that principle and partly on the principle of a special partnership, with special stipulations, as is proposed by the Counsel for Quebec. The moment you take into account the value of the Capital Stock (Rates and Duties), each brought into the Union, and the charges with which such Capital Stock (Rates and Duties) were encumbered, then you must proceed on that principle throughout. It is impossible any one can contend that on the principle of partnership accounts, or any other principle whatever, you can take an isolated item, for example, as is proposed by the Counsel for Quebec in this case, a charge or incumbrance on the Rates and Duties brought into the partnership concern, and stop short there—making no enquiry into the assets created by this very debt or charge, and handed over to the partnership firm, and no investigation into the partnership dealings and transactions during the long period the partnership continued. If it be assumed that absolute equality did not exist at the beginning, and did not continue throughout the partnership in all its accounts and dealings, and at its end, but on the contrary *that there was inequality at the beginning*, then the Arbitrators will have made up their minds to discard, in the consideration of this question, the provisions of the Union Act of 1840, to which I have referred, and the subsequent legislation of the late Province of Canada throughout the period of the Union, and must proceed to take the accounts according to law, as follow :—

"1. Ascertain how the firm stands as regard non-partners," (which in the present case would be the amount of the excess of debt over $62,500,000, a matter to be determined, not by the Arbitrators, but by the Dominion Government and the Province.)

"2. Ascertain what each partner is entitled to charge in account with his "co-partner, remembering in the words of Lord Hardwicke, that each is entitled to "be allowed, as against the other, every thing he has advanced or brought in as "a partnership transaction, and to charge the other in account with what that "other has not brought in, or has taken out, more than he ought."

"3. Apportion between the partners, all profits to be divided, or losses to be "made good, and ascertain what, if any thing, each partner must pay to the other "in order that all cross claims may be settled. In order therefore to take a part-

"nership account it is necessary to distinguish joint estate from separate estate; "joint debts from separate debts; and to determine what gains and what losses "are to be placed to the joint account of all the partners, or to the separate "account of some or one of them exclusively."—*Lindley's Law of Partnership p.* 828.

This author goes on to say—"The principles on which this is to be done have "been explained in previous chapters. Referring the reader therefore to them, and "reminding him that in taking the accounts between partners, attention must be "paid, not only to the terms of the partnership articles, but also to the manner in "which they have been acted on by the partners, there remains but little to add "on the present subject, except as regards just allowances, the period over which "the account is to extend and the evidence upon which it is to be taken."

In the latter quotation reference is made to "the terms of the partnership "articles, and the manner in which they have been acted on by the partners." In the present case reference to the Union Act of 1840, and to the manner in which the provisions of that act were acted on during the Union, as evidenced by the Statutes passed under it, including the appropriation acts for each year, and the records contained in the Public Accounts published annually, *would, in any court of law or equity forever preclude any other accounting than an equal division of the excess of debt and of the assets.* I make this observation to show that this portion of the direction of the author in taking the account is inapplicable in the view I am now discussing of applying the partnership principle to the adjustment of the debts, credits &c., of the Provinces. For if reference is made "to the terms "of the articles of partnership, and to the manner in which they have been acted on," for one purpose, it must be for all purposes. They must be excluded entirely, or acted upon altogether in respect of all matters to which they apply; and in the present case they apply to every transaction whatever. But assuming they do not apply, and assuming that the "*charge on the Rates and Duties*" of Upper Canada, called its debt, as also the state of the Exchequer of Lower Canada, called its credit or cash in hand, are to be taken into account in the apportionment of the excess of debt and the division of the assets, it inevitably follows as a rule of law, sanctioned by every principle of justice, that the account between Upper and Lower Canada must be taken as follows:—

1. An account of the debt of each Province at the Union, assumed by United Canada.

2. An account of the value of the assets in the nature of public works of each Province transferred to United Canada.

3. An account of the net revenue derived from each Province, during the Union from sources other than from public works which were provincial in their character, and although situate entirely in one Province were common to both, as for example the Welland Canal, St. Lawrence Canals, Lake St. Peter Works, Chambly Canal, Works on the Ottawa, Slides, &c.

4. An account of the revenue derived from the works mentioned in the third paragraph.

5. An account of the expenditure in each Province on objects or for purposes other than those mentioned in the third paragraph.

6. An account of the expenditure on objects for for purposes mentioned in the third paragraph.

In order that disputes may be avoided, the public accounts should be strictly adhered to in taking the accounts. The total debt after deductions to be made according to the British North America Act will be given by the Dominion Government—from it will be deducted $62,500,000, which, in so far as Ontario and Quebec are concerned removes altogether from the consideration of the arbitrators this sum—Ontario and Quebec paying their proper portion of it into the Dominion exchequer. Therefore, it will only be the excess debt over this amount with which the arbitrators will have to deal.

The accounts being taken in accordance with the above six propositions, it will be seen whether Lower Canada has paid more or less into the Treasury of the late Province from local or Lower Canada sources than it has drawn out of it for local or Lower Canada purposes and objects; if more, the late Province will be indebted to it for the excess; if less, it will owe the late Province what it has drawn out over its contributions into the Common Treasury.

The same consequences will attach to Upper Canada, and the apportionment of the excess of debt and the division of the assets will be made between the two Provinces accordingly.

I have now said all I think it necessary at present to say on the subject. It seems to me, it would be well in the first place, carefully to consider in connection with the whole subject, the Union Act of 1840. In my judgment, it lays down a broad and fundamental basis which must be taken to be the solemn contract between the parties, and from the provisions of which no departure can be permitted. Here is something tangible, something explicit, something which cannot be denied, and which on all occasions can be invoked in justification of all things done in conformity to its stipulations. Let the question be asked with respect to every view which has been taken of the subject and every suggestion which has been offered, "what says the Constitutional Act, under which Upper Canada and Lower Canada became re-united in relation to this matter"? In the second place it would, I submit, be well attentively to consider and never to lose sight of the fact that the annual appropriation Acts were passed by the Legislature in view of and with full notice and knowledge of all the circumstances of the Union and of the contributions made to the revenue by each Province, and that therefore it must be assumed that the Legislature has adequately provided for, met and satisfied the just claims of each Province. Neither should it escape attention that the proper adjustment of the apportionment of moneys has been recognized, and expressly

acted on in many acts of the Legislature of the late Province. It was done in the Rebellion Losses Act, which as compensation to Upper Canada gave to it its Marriage License money. It was done in the Seignorial Act of 1854 when $600,000 was specially set apart for Upper Canada purposes as compensation for that amount charged on Consolidated Revenue for the redemption of Seigniorial rights. It was again done in 1859 when compensation to the amount of upwards of $2,218,000 charged upon Consolidated Revenue in respect of Seigniorial rights was carried to the credit of the Municipal Loan Fund of Upper Canada. It was yearly done in the Appropriation Acts in respect of Common Schools, Colonization roads, Charitable and Educational Institutions, in short in almost every grant of public money for local as distinguished from general Provincial objects. If these facts, with the manner in which the Public Accounts have been kept, and the manner in which the debt of the Dominion was adjusted in Confederation, are taken into consideration and duly weighed, it seems to me the arbitrators cannot be at a loss or have even doubts as to the judgment at which they should, nay necessarily must, arrive.